

# **Exhibit A**

**FILED**  
LOS ANGELES SUPERIOR COURT

DEC 04 2007

JOHN A. CLARKE, CLERK  
*John A. Clarke*  
BY MARIA FRANCES LOPEZ, DEPUTY  
*Maria F. Lopez*

## ELECTRIC REFUND CASES - JCCP 4512

Following a hearing on November 30, 2007, at which time the demurrers were taken under submission, the rulings below are now made:

The court takes judicial notice of the documents as requested.

Demurrer to the first cause of action (breach of contract) is overruled with 20 days to answer. A) As to the statute of limitations, the doctrine of equitable tolling is properly pled. This raises factual issues which cannot properly be decided on demurrer. B) The breach of contract cause of action is proper under Bonneville Power Admin. v. FERC (9<sup>th</sup> Cir. 2005) 422 F. 3d 908, and under the contracts themselves which state that they are subject of FERC's authority.

Demurrer to the second cause of action (anticipatory breach) is also overruled with 20 days to answer. The cause of action is properly pled and, again, raises factual issues which cannot properly be decided on demurrer.

Demurrer to the third cause of action (unjust enrichment) is sustained without leave to amend except as to P G & E. This cause of action is not recognized under the Government Code pursuant to Government Code, Section 815. As to P G & E however immunity was waived in the Bankruptcy proceeding.

Demurrer to the fourth cause of action (money had and received) is overruled with 20 days to answer based upon the case of Utility Audit Co. v. City of Los Angeles (2003) 112 CA 4<sup>th</sup> 950.

Demurrers to causes of action 5 through 9 are overruled with 20 days to answer.

Demurrer as to EOB is sustained without leave to amend. Under CCP Section 1060, declaratory relief requires an actual controversy and here defendants had no legal obligations to the EOB, so EOB has no standing to sue. This ruling without prejudice to a motion to intervene.

Electric Refund Cases (cont'd) Page 2

Demurrer as to AEPCO is sustained without leave to amend for failure to exhaust administrative remedies. This ruling is without prejudice.

As to defendants Burbank and Turlock, the complaint adequately alleges an implied-in-fact contract. The demurrer is overruled with 20 days to answer.

Dated: December 4, 2007

Wendell Mortimer, Jr.  
Judge, Los Angeles Superior Court  
CCW, Dept. 307